

Message Text

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FOR L/PM

E. O. 11652: N/A
TAGS: PGOV, PFOR, KE
SUBJ: CABINET TASK FORCE ON QUESTIONABLE PAYMENTS ABROAD:
RE KENYA LAWS ON QUESTIONABLE PAYMENTS

REF: STATE 094647, 75 NAIROBI 9660

1. ANSWERS TO SPECIFIC QUESTIONS IN PARA 2 OF REFTEL
FOLLOW. ALSO PROVIDED ARE SUMMARIES OF PERTINENT
LEGISLATION. FULL TEXT OF RELEVANT LAWS FOLLOWS IN
POUCH.

A. YES.

SECTION 3 OF THE PREVENTION OF CORRUPTIMC ACT, CHAPTER
65 LAWS OF KENYA TREATS AS A FELONY OFFENSE BOTH THE
GIVING AND RECEQPT OF ANY CONSIDERATION FOR OR ON BEHALF
OF AN OFFICER OR SERVANTTVOF A PUBLIC BODY IN REGARD TO
ANY MATTER WITH WHICH THAT PUBLIC BODY IS CONCERNED.
UNDER THIS SECTION, WHENEVER A PERYN GIVES OR PROMISES
A LOAN OR CONSIDERATION TO ANY OTHER PERSON, HAVING
REASONABLE CAUSE TO BELIEVE SUCH ACT MAY LEAD TO A
VIOLATION OF THE ACT BY A RECIPIENT, HE IS TAKEN TO
HAVE VIOLATED THE LAW,;
CONVICTION IS PUNISHABLE BY
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UP TO SEVEN YEARS IMPRISONMENT AND KENYA SHILLINGS

10,000 FINE. IN ADDITION, THE COURT MAY DIRECT FORFEITURE OF ANY ADVANTAGE OR CONSIDERATION RECEIVED BY THE CONVICTED PARTY.

B. NO.

HOWEVER, ANY FAILURE BY A CORPORATION INCORPORATED IN KENYA OR REGISTERED HERE AS A FOREIGN COMPANY TO KEEP AN ACCURATE RECORD OF ANY PAYMENT TO OR FOR A GOVERNMENT OFFICIAL WOULD BE A VIOLATION OF LEGISLATION REQUIRING SUCH COMPANIES TO KEEP TRUE AND ACCURATE ACCOUNTING DOCUMENTS. THE INCOME TAX DEPARTMENT HAS WIDE POWERS TO CALL FOR SUCH DOCUMENTATION.

C. NO.

KENYAN LAW DOES NOT PROHIBIT CIVIL SERVANTS OR POLITICIANS FROM ACTING AS AGENTS OF PRIVATE FIRMS. IT IS OFTEN THE CASE THAT A CIVIL SERVANT IN ONE MINISTRY ACTS AS AN AGENT FOR FIRMS SELLING TO ANOTHER MINISTRY. HIS COUNTERPART IN THE OTHER MINISTRY IS ALSO DOING THE SAME THING AND BUSINESS IS ACCOMPLISHED ON A "COOPERATIVE" AND "LEGAL" BASIS.

D. NO.

E. NO. COMMENTS ON B APPLICABLE.

F. YES.

SECTION 4 OF THE PREVENTION OF CORRUPTION ACT, CHAPTER 65 LAWS OF KENYA, TREATS AS A FELONY ANY CORRUPT INDUCEMENT OF, OR ACCEPTANCE OF INDUCEMENT BY, AN AGENT IN RESPECT OF HIS EMPLOYER'S AFFAIRS. THE ACT SPECIFICALLY NAMES AS A FELONIOUS ACT, BUT NOT TO THE EXCLUSION OF OTHERS, INDUCEMENT OR ACCEPTANCE OF INDUCEMENT FOR SHOWING "FAVOUR OR DISFAVOUR TO ANY PERSON IN RELATIONS TO HIS PRINCIPAL'S AFFAIRS OR BUSINESS." THE SECTION ALSO TREATS AS A FELONY THE KNOWING SUBMISSION

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OF ANY FALSE, ERRONEOUS OR DEFECTIVE RECEIPT OR OTHER DOCUMENT INTENDED TO MISLEAD THE EMPLOYER. CONVICTION IS PUNISHABLE BY IMPRISONMENT FOR UP TO SEVEN YEARS AND FINE OF UP TO KENYA SHILLINGS 10,000.

2. ADDITIONAL COMMENTS ON THE PERTINENT KENYA LAW FOLLOW:

3. VIOLATIONS OF SECTION 3 OR SECTION 4 OF THE PREVENTION OF CORRUPTION ACT CONCERNING A CONTRACT OR PROPOSED CONTRACT WITH THE GOVERNMENT, OR A SUBCONTRACT FOR WORK COMPRISED IN SUCH A CONTRACT, MAY BE PUNISHED BY UP TO 10 YEARS IMPRISONMENT.

4. UNDER SECTION 6 OF THE PREVENTION OF CORRUPTION ACT A PUBLIC SERVANT WHO CORRUPTLY ACCEPTS OR AGREES TO ACCEPT A CONSIDERATION FROM A PERSON KNOWN TO BE CONCERNED WITH TRANSACTIONS INVOLVING HIM AS A PUBLIC SERVANT, WITHOUT ADEQUATE COMPENSATION, IS CONSIDERED TO HAVE COMMITTED A FELONY EVEN IN ABSENCE OF SPECIFIC PROOF THAT A SECTION 3 VIOLATION OCCURRED. A PUNISHMENT OF UP TO 5 YEARS IMPRISONMENT AND KENYA SHILLINGS 5,000 FINE IS PROVIDED.

5. UNDER SECTION 7 OF THE PREVENTION OF CORRUPTION ACT, ANY PAYMENT TO AN EMPLOYEE OF THE GOVERNMENT BY A PERSON HOLDING OR SEEKING A GOVERNMENT CONTRACT IS PRESUMED TO HAVE BEEN A CORRUPT INDUCEMENT FOR PURPOSES OF PROSECUTION UNDER SECTION 3 OR SECTION 4.

6. UNDER SECTION 10 OF THE PREVENTION OF CORRUPTION ACT, THE ATTORNEY GENERAL IS AUTHORIZED, WHENEVER HE HAS REASONABLE GROUNDS TO BELIEVE AN OFFENSE UNDER THE ACT HAS BEEN COMMITTED, TO CAUSE TO BE INVESTIGATED THE BANK ACCOUNTS, SHARE ACCOUNTS, OR PURCHASE ACCOUNTS OF ANY PERSON INVOLVED IN THE SUSPECTED FELONY. FAILURE TO DISCLOSE THE INFORMATION SOUGHT IN AN OFFENSE CARRYING MAXIMUM PUNISHMENT OF ONE YEAR'S IMPRISONMENT AND A KENYA SHILLING 2,000 FINE.

7. UNDER SECTION 11 OF THE PREVENTION OF CORRUPTION
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ACT, THE FACT OF POSSESSION BY AN ACCUSED OF PECUNIARY OR OTHER RESOURCES FOR WHICH HE CANNOT SATISFACTORILY ACCOUNT MAY BE TAKEN INTO CONSIDERATION BY THE COURT AS CORROBORATING EVIDENCE.

8. PROSECUTION OF ANY OFFENSE UNDER THE PREVENTION OF CORRUPTION ACT REQUIRES THE WRITTEN CONSENT OF THE ATTORNEY GENERAL OR THE SOLICITOR GENERAL.

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